

### **REMARKS**

Claims 1-35 are currently pending in the application. In the Office Action dated April 1, 2008, claims 1-35 were rejected. By this Amendment, claims 36-43 have been added and claims 1, 18, 27 and 32-35 have been amended, without acquiescence or prejudice to pursue the original claims in a related application. No new matter has been added.

### **Claim Rejections - 35 USC § 102**

Claims 18-31 and 34-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Burgoon. (United States Patent No.: 5,706,510).

Claim 18 recites at least the feature of the authorized members in the first/second group to be upgraded in a first/second staggered manner. Burgoon fails to disclose the limitations as claimed.

According to the Final office action, Burgoon teaches updating the shared file system using the zymlinks. Then, the Final Office action incorrectly concluded that updating the system of Burgoon is the same as the rolling upgrade as claimed. An update is not the same as a rolling upgrade as claimed.

As stated in paragraph 3 of the specification as originally filed, a “rolling upgrade” refers to the process of performing software upgrades to a live existing software installation in a distributed environment in which the individual instances, nodes, or entities of the distributed system (referred to herein as “members”) are upgraded in a staggered manner.

The update of Burgoon allows whole trees of files to be updated using zymlink. Updating whole trees of files is not the same as the rolling upgrade as defined above. Therefore, updating the shared file system using the zymlinks is not the same rolling upgrade. Therefore, Burgoon fail to disclose the rolling upgrade as claimed.

For at least these reasons and reasons stated in previous responses, Applicants submit that Burgoon fails to anticipate every limitation of claim 18. Because claims 34 and 35 share each of the limitations of claim 18 discussed above, they are not anticipated by Burgoon.

Furthermore, because claims 19-31 depend from claims 18, 34 and 35, they also are not anticipated by Burgoon.

**Claim Rejections - 35 USC § 103**

Claims 1-17 and 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgoon in view of Earl et al. (United States Patent No.: US 6,966,058 B2).

Claim 1 and similarly claims 32-33 recite the feature, “wherein the first member and the second member are located on a same node of the computing system” (emphasis added).

Final Office action also states that Earl teaches sequentially loading and rebooting each of the plurality of nodes. However, this rolling upgrade process of Earl is not the process for the rolling upgrade as claimed. As recited in the claims, it is the members within a node that are brought down and up in a staggered manner. The rolling upgrade of Earl reboots nodes and is silent with respect to bring up and down members within the node as claimed. Thus, the rolling upgrade of the claims is different than the rolling upgrade process of Earl.

For at least these reasons and reasons stated in previous responses, Applicants submit that Burgoon in view of Earl fails to teach or suggest every limitation of claim 1. Because claims 32 and 33 share each of the limitations of claim 1 discussed above, they are not rendered obvious by Burgoon in view of Earl. Furthermore, because claims 2-17 depend from claims 1, they also are not unpatentable.

**CONCLUSION**

Based on the foregoing, all remaining claims are in condition for allowance, which is respectfully requested. If the Examiner has any questions or comments regarding this response, the Examiner is respectfully requested to contact the undersigned at the number listed below.

To the extent that any arguments and disclaimers were presented to distinguish prior art, or for other reasons substantially related to patentability, during the prosecution of any and all parent and related application(s)/patent(s), Applicant(s) hereby explicitly retracts and rescinds any and all such arguments and disclaimers, and respectfully requests that the Examiner re-visit the prior art that such arguments and disclaimers were made to avoid.

The Commissioner is authorized to charge any fees due in connection with the filing of this document to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **OI7030492001**. The Commissioner is authorized to credit any overpayment or to charge any underpayment to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **OI7030492001**.

Respectfully submitted,

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